

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
@ Communications, Inc., Requestor	)	
	)	
v.	)	
	)	CC Docket No. 02-4
Carolina Telephone and Telegraph Company	)	
And Central Telephone Company (collectively,	)	
"Sprint"), Respondents	)	
	)	

**COMMENTS OF  
PAC-WEST TELECOMM, INC.  
AND US LEC CORP.**

**I. INTRODUCTION**

Pac-West Telecomm, Inc. and US LEC Corp. (collectively "Commenters"), by their undersigned counsel and in accordance with the Commission's Rules, hereby submit these comments in response to the Petition for Declaratory Ruling of @ Communications filed January 10, 2002 (the "Petition"). In the Petition, @ Communications requests that the Commission issue a declaratory ruling stating that current Commission rules require incumbent local exchange carriers to bear the cost of transport on the ILEC side of the Point of Interconnection ("POI") with a CLEC. For the reasons stated below, the Commenters support the Petition and believe that the Commission should issue such a declaratory ruling to specify the current state of the Commission's interconnection rules. Such a ruling will prevent ILECs such as Sprint from effectively undermining the Commission's rules, unduly influencing CLEC network architecture, and harming competition.

**II. CHARGING FOR TRANSPORT ON THE ILEC SIDE OF THE POI EFFECTIVELY VIOLATES THE COMMISSION RULE THAT A CLEC NEED ONLY ESTABLISH ONE POI PER LATA**

The Commission has already addressed the issue of whether CLECs must establish POIs in an ILEC calling area, and determined that CLECs need only establish one POI per LATA.<sup>1</sup> Sprint's actions, as described in the Petition, stand this rule on its head by allowing CLECs to establish a single POI per LATA, but then charging the CLEC for the "additional" transport to the ILEC central office. Sprint's behavior is particularly egregious given that @ Communications apparently agreed to establish a POI at each tandem switch, which is above and beyond what the Commission's rules require. Charging CLECs for transport, based upon what is an essentially arbitrary architecture used by virtually all ILECs, imposes artificial and inefficient costs on the CLEC network and, thus, effectively eliminates the intended benefits of the one POI per LATA rule.

**A. The Commission Intended That The One POI Per LATA Rule Would Enable CLECs To Construct Efficient Networks**

The Commission's interconnection rules were established to allow CLECs to determine independently their most efficient means of interconnection given predicted traffic patterns and volume. When transport was more expensive than it is presently and switches had less capacity than current technology allows, incumbent carriers would deploy multiple switches within a particular geographic region, with switches connected to each other through tandem switches. This network architecture largely assumed a hub-and-spoke architecture in which the tandem switches were the hubs and the end offices were at the ends of the interoffice transport "spokes."

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<sup>1</sup> 47 C.F.R. § 51.701.

This may have been the most efficient way to provide ubiquitous coverage and interconnectivity at the time. With the advent of fiber optic technologies, however, transport costs have been dramatically reduced. Further, switching technology has become more efficient. As a result, a single switch connected to fiber-optic transport can serve geographic areas comparable to the areas previously served by tandem switches connected to end-office switches. Sprint's attempts to get CLECs to cover the cost of transport on the ILEC side of the POI is an attempt to make CLECs pay for ILECs' outdated technology. It forces the CLECs to either duplicate the ILEC architecture or pay the ILEC for the "privilege" of constructing a modern network and requesting interconnection consistent with the Commission's rules.

The consequences of Sprint's demand is to remove these cost savings from new technology by requiring @ Communications, and thus all CLECs wishing to interconnect with Sprint, to either deploy switches in a ubiquitous manner to mirror Sprint's network resulting in an over-deployment of switching capacity for a given volume of traffic, or pay Sprint the costs associated with transporting traffic to Sprint's hub-and-spoke central office system. Such an architecture is not efficient given modern switching and transport technology. CLECs can service customers efficiently without deploying multiple switches or POIs across a wide geographic area and are not presently required to do so; but, allowing ILECs to charge CLECs for transport to ILEC central offices is contrary to this rule, with the added anti-competitive feature of having CLECs pay for the preservation of the antiquated ILEC network architecture.

The Commission has already stated that each party to an interconnection agreement is to bear their own respective transport costs on their side of the POI.<sup>2</sup> The Commission acknowledged that current rules allow a CLEC to interconnect at any technically feasible point, including a single POI per LATA in the *Intercarrier Compensation NPRM*.<sup>3</sup> Even though this issue is being evaluated in that proceeding, the Commission should clarify that the *current* obligations of the ILECs under the rules requires them to bear their costs to transport traffic from the POI to their central office. The Commission should not permit incumbent carriers to arbitrarily charge CLECs for transport costs on the ILEC side of the POI in violation of FCC rules.

**B. Forcing CLECs To Bear Costs For Transport On The ILEC Side Of The Interconnection Point Dictates Points Of Interconnection Based Upon Obsolete Network Architecture Would Discourage Competition and Market Entry.**

If ILECs can assess transport charges based on their antiquated network architecture, then CLECs will be forced to include these inappropriate and duplicative costs in their pricing structure. The effective result of Sprint's behavior is that CLECs would be required to rearrange their networks so that CLECs have POIs within each ILEC-defined central office level, either physically with actual switching or financially, through the cost of transport to support ILEC architecture. It makes no sense for the Commission to offer CLECs flexibility in network

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<sup>2</sup> See, Petition at 11, n.14 (citing *ISP Remand Order*).

<sup>3</sup> See, *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, CC Docket No. 01-92, FCC 01-132, released April 27, 2001 ("*Intercarrier Compensation NPRM*" or "*NPRM*")t 72, 112; see also, 47 C.F.R. § 51.701.

engineering and interconnection arrangements only to have ILECs impose transport charges on CLECs based upon incumbent network design.

Moreover, it would not be competitively neutral to require CLECs to base their networks on soon-to-be-defunct ILEC network architecture. By essentially requiring interconnection with the ILEC in every ILEC-defined central office, the Sprint-levied transport charges would thus virtually require CLECs to construct imitation ILEC networks. This would significantly hamper the ability of CLECs to provide superior and specialized quality service. Instead, interconnection should be based on current engineering principles, rather than decades-old design choices made by ILECs prior to competition. Permitting CLECs to innovate and deploy the most efficient technology available is essential to their ability to compete effectively against incumbents. To avoid Sprint's transport charges, the CLEC would be compelled to establish multiple POIs with the incumbent, thereby shifting the transport obligation onto the CLEC. Shifting these costs onto a new market entrant would only make interconnection more expensive and inefficient, and thereby discourage new market entry.

The approach of the Commission's interconnection rules places ILECs and CLECs in exactly the same situation in that both can construct the new networks and facilities that will produce more profits and better service to consumers. In effect, allowing ILECs to charge the CLECs that do not mirror the ILEC network rewards ILECs in their status as incumbents and sends a clear signal that they do not need to construct new and more efficient networks. In contrast, of course, CLECs do not enjoy the benefits of incumbency. The Commission should not impose a result that harms CLECs' ability to provide more cost efficient services using modern telecommunications technology.

**C. Charging CLECs For Transport On The ILEC Side of the POI Is Inconsistent With Long-standing Industry Practices Regarding Cost Sharing Among Carriers**

Sprint's demand that @ Communications bear the cost of transport on the Sprint side of the POI is particularly inappropriate given the established method for LECs to receive payment for their calls. A carrier is paid for its calls by end-users. It is then the carrier's responsibility to transmit that call and make arrangements for its termination. The carrier is responsible for any costs associated with the termination of that call. As such, Sprint, and not @ Communications, reap the financial benefits of the call from the Sprint end user and should bear the costs. Of course, traffic originated by @ Communications would be interconnected and terminated by Sprint at @ Communications' expense. Sprint's proposal ignores this basic principle of intercarrier relations and expects @ Communications to bear the costs for Sprint to transmit the calls originated by Sprint customers, while still on Sprint's network.

In a larger sense, while carriers may each incur costs in transmitting a call, this highlights precisely why carriers establish a POI. It is at this point where the responsibility for the call is transferred and the terminating carrier then handles the completion of the call. Of course, the terminating carrier recovers the cost of the facilities on its side of the POI via reciprocal compensation charges for transport and switching. Sprint's conception of the POI appears to be merely a point at which the two networks are physically connected and traffic is exchanged between networks, but with no relationship to how costs are allocated between carriers. Instead, Sprint seems to believe it is appropriate for it to bill CLECs for the cost of carrying traffic originated on its own network and paid for by its own end-users. This conception is completely backwards with basic intercarrier relations; originating carriers reap the financial benefits of a

call, and should pay for the costs associated with its completion, as well. Sprint's position is not only inconsistent with Commission rules, as outlined above, but is completely contrary to established practice in the communications industry.

### **III. THE COMMISSION SHOULD REAFFIRM THAT ONLY ONE POI PER LATA IS REQUIRED**

As noted above, Sprint's behavior is particularly troubling given that @ Communications had agreed to put POIs at all tandem switches which is in excess of what CLECs are required to provide under the rules. In ruling on the facts in this Petition, the Commission should take the opportunity to reiterate that CLECs are only obligated to establish a single POI per LATA, and are not required to establish POIs at each ILEC central office or tandem office. While parties to an interconnection agreement can certainly agree to more expansive POIs as is the case in this proceeding, the Commission should not predicate or imply that any decision on this petition is based on @ Communications' willingness to establish more than one POI per LATA with Sprint. To do otherwise would effectively weaken CLEC rights under the Commission's current rules and embolden ILECs to make further attempts to impede CLEC ability to interconnect in accordance with the rules.

### **IV. CONCLUSION**

The Commission established its interconnection rules to allow CLECs flexibility in their network construction and planning. In particular, the Commission's one POI per LATA rule allows CLECs the opportunity to utilize new and developing technologies to optimize their networks. That ability to exercise technical discretion would be severely hampered by allowing

ILECs such as Sprint the ability to force CLECs to bear the costs of transport to mirror the ILECs' network architecture. As such, the Commission should grant the Petition and issue a declaratory ruling stating that current Commission rules require ILECs to bear the cost of transport on their side of a POI and that CLECs are not required to interconnect with ILECs at more than one POI per LATA.

Respectfully submitted,

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February 19, 2002